Supreme Court of the United States.

OCTOBER TERM, 1897

No. 35.

UNITED STATES

vs.

SIMON GOLDENBERG ET ALS.

(Goldenberg Bros.)

BRIEF FOR APPELLEES.

Statement.

June 29, 1891, appellees imported into New York, and entered for consumption, certain merchandise, the character of which is of no consequence (though unnecessarily stated in the record) whether cheese or cottons, shoes or silks, since it is expressly found (page 2, folio 4, par. 11) that the classification and rate assigned to the goods by the collector, and his exaction of duty thereon accordingly, were wrong; and that the classification and rate claimed by Goldenberg Brothers in their seasonable and sufficient protests were the correct, legal and applicable ones.

The chronology is this;—Consumption entry, June 29, 1891, when the *estimated* duties were paid. (Rec. 1, fol. 2, pars. 1, 5.) The entry was liquidated, at the

rate so erroneously adopted, July 16, 1891. (*Id.* par. 2). July 21, 1891, the importers protested against the collector's wrongful exaction, indicating to him the correct classification and rate. (*Id.* pars. 3, 4, and p. 2, fol. 4, par. 11.) The increased duties under this liquidation were paid July 27, 1891, on the eleventh day after said liquidation. (*Id.*, pp. 1, bottom, and 2, top.) The sole question is, whether these appellees have lost their right to have this illegal exaction (paid under proper protests) returned to them because the payment was not made within ten days after liquidation. The Circuit Court thought not, the government appealed, and the Circuit Court of Appeals submits the matter to this Court.

POINTS.

After reciting the facts and (in full) the fourteenth section (26 Stats. 137) of the act of June 10, 1890, to be construed, the Circuit Court of Appeals propose the question to be answered, in this form :—

" Was the payment of the full amount of the duties ascertained to be due upon the liquidation of the entry of the merchandise, required to be made by the importers (as well as the giving of notice of dissatisfaction, or protest) within ten days after the liquidation of such duties, where the goods (as in the present case) were entered for consumption, in order to enable the protesting importers to have the exaction and classification reviewed by the Board of General Appraisers and by the Courts ?" (Rec. 3, fols. 5, 6.)

In other words, is complete payment within ten days after liquidation an element of jurisdiction, upon an appeal from the collector ?

I.

Statute does not impose suggested limitation.

From February 26, 1845—when the act passed "a few days" (4 Blatch. 488) after the majority decision in Cary vs. Curtis (3 How. 236) took effect—the right of an importer to recover excess of duties illegally exacted has rested upon statutes, by which it is created, limited and defined.

"The act was passed to change the law announced by that decision." (2 Curt. C. C. 241.)

The importer's right "is regulated, as to *all* its incidents, by EXPRESS statutory provisions."

Arnson v. Murphy, 109 U. S., 238, 243.
Marine v. Lyon, 10 C. C. Ap. 318 bot.
Birtwell v. Saltonstall, 14 *Id.*, 1004, 1007.

The opinion, per PUTNAM, C. J., in this last-cited case observes there must be "a payment preceded by, accompanied with, or followed by a protest, *whichever is permitted by section 2931.*" *(Ibid. 212.)*

The inquiry now is, what is "permitted" by the fourteenth section of the act of June 10, 1890?

In the government's briefs, here and below (where the cause was not argued, the Court declaring the intention to certify the question before the U. S. Attorney had completed his preliminary statement) it is conceded the statute does not *expressly* impose the ten-days' limitation of payment as a condition of appeal from the collector's decision. (Atty.-Gen.'s Brief, p. 4, bottom, and 6, near top.)

Upon the first-indicated page (4, bottom) it is said; —"A literal interpretation of the statute favors the importers." Near the top of the sixth page, it is admitted that, "Strictly speaking, Judge TOWNSEND is correct in saying that *this statute contains no ambiguity.*"

"There is no room for inference; and if the terms of the statute are not ambiguous, there can be no reasoning from analogy."

Marine v. Lyon, 10 C. C. A 317, bottom.

The whole argument in this case is *ab inconvenienti;* and rests upon a *false* assumption of any such inconvenience, and upon a *false* assumption of other facts supposed by the government to be such as affect the judicial construction of this section 14.

"There being no ambiguity, there is no room for construction. It would be out of place. The section must be held to mean what *the language* imports. When a statute is clear and imperative, reasoning *ab inconvenienti* is of no avail."

Cherokee Tobacco, 11 Wall. 620.
Knickerbocker v. Peo. 102 Ills. 221.

II.

Supposed inconvenience imaginary.

The assumptions we declare unfounded do not originate in the government brief in this case, but are adopted (its p. 8) from an opinion signed by a former Attorney-General, July 6, 1891; apparently elicited by the Treasury customs-bureau because the General Appraisers, Nov. 26, 1890 (G. A. 33, Treas. Dec., p. 632) held a payment of duty within ten days after its liquidation *not* a necessary prerequisite to their entertaining jurisdiction of a protest in regard to an entry, as to which duties had been paid after these ten days; and had said a prior ruling of theirs to the contrary to be *obiter*, inadvertent and wrong.

They say, *ubi sup.*:—"The payment of duties, therefore, is not a condition precedent to the right to protest, but only to the right to have the papers in the case transmitted to the Board for their consideration.

The dictum to the contrary in our decision, G. A. 33, made Sept. 16, 1890, was unnecessary to the determination of that case, and was inadvertently used."

Had the Board deliberately considered and determined originally as they did Nov. 26, 1890, probably the question would never have been further mooted by the Treasury Department.

The assumptions by which it is sought to vary the natural meaning of an unambiguous statute are not sustained by any facts appearing upon this record, proven in this case, or of judical cognizance.

The Board's and Court's (not simply "the importer's") construction of the statute does not, and cannot *per se*, "indefinitely postpone a review of the collector's decision," etc. (Govt. Br. 3.) By looking at the Attorney-General's opinion (20 A. G. Ops., at p. 185) it will be found that the means of enforcing prompt payment by retention of the examined packages is voluntarily relinquished, without any requirement of law that the lien should thus be lost; and that the personal security, which gives rise to this unnecessary talk about a jury trial (as if that were an evil to be avoided at all hazards) is also voluntarily taken, not given in the exercise of any absolute right conferred by Congress;—and this course is pursued because it has been found practically the best one, and that it involves no such evil as is suggested, and the supposed inconvenience arising from delay has no weight in comparison with the convenience of the established practice of giving up the possession of the goods. Towards the close of the Opinion (p. 194, top) the Attorney-General says the retention of the goods would prevent the delay of payment.

The fact that it is the general practice, under express statute, to so deliver *all* goods before liquidation settles their classification and rate of duty—hence, before it *can* be known whether there ever will be any protest, or occasion for one, or not—shows the utter insufficiency

of the Attorney-General's opinion to indicate any ground for giving a twist to the language of the statute. If a protestant does not pay the liquidated duty promptly, he is subject to precisely the same coercive measures as is the dilatory merchant who neglects to pay a duty which he does not challenge! And the unprotested duties are probably more than a hundred to one that is protested. (R. S., §§ 2869, 2899.)

Naturally, the estimate generally exceeds the duty assessed, the exceptions to this rule affording no ground for special legislation.

"This payment is but preliminary and indefinite, a sum in gross and by estimate, intended to be large enough to cover the actual legal amount of duty, when ascertained."

Moke v. Barney, 5 Blatch. 276.

The paragraph of the Atty.-Gen's Opinion, quoted at bottom of the third page of the Government's brief, begins;—"The practical result of this ruling is an accumulation in the custom-houses of large numbers of protests, which may be made for speculative purposes, and which are not promptly transmitted to the Board of Appraisers, because of the failure of the importers to pay the increased duties against the exaction of which they file their protests."

This is largely 'bugbear,' but so far as it contains any truth is not nearly the evil it is assumed to be; nor is that which is stated in the rest of this quotation. (Govt. Brief, 4 top.)

Suppose *all* protests were "promptly transmitted" so soon as filed:—postponing the consideration of the idea that *such* transmittal would defeat the avowed object of filing the protest with the collector—they would necessarily then "accumulate" in the offices of the Board of General Appraisers! Everybody knows that the greater number of protests are divisible into classes, so that the decision upon one case, of a given character, will sustain or nullify a great number of protests, whether these be upon the files of the Custom-

House or of the Board. It can make no difference upon the shelves of which of two buildings pertaining to the customs business of the government these protests rest while awaiting a determination. To transmit them from one building to the other has not the slightest tendency to hasten the Board's decision; and their retention at the custom-house does not in the least delay or defeat "the prompt disposition of questions arising under the tariff."

The Treasury Department recognizes this state of things. Its circular letter of July 15, 1891 (SS. 11,458) instructs collectors *not* to send the papers to the Board of Appraisers where the protest sets up an objection which had been sustained by a previous decision of the Board; but all such *entries* should be re-liquidated at the Custom-House, conformably to such decision, *without* recourse to the Board.

SS. 1602, May 1, 1895, addressed by the Secretary to the Board concludes thus;—

"I desire also to add that it will be well generally to *suspend action on protests* where the question involved has been decided by the courts adversely to the government, until you are definitely advised by the Department that no further proceedings will be taken therein."

This class character of the questions arising disposes of the slurring allusions in this Opinion to "speculative" protests.

If John Smith, importer, makes a hundred entries to which the same ground of protest is applicable, it is not "speculative" for him not to press them all at once, but to let the other ninety and nine await and abide the result of the first. If John Smith knows that Joseph Jones' protest presents the identical objection made in his, it is not "speculative" for him to let his await and be settled by the decision upon Jones' protest. Such awaiting to abide is familiar to the courts; and is commendable, rather than obnoxious to adverse criticism.

Touching the next paragraph quoted upon the fourth page of the government's brief, we have already noted that it is *not* the act of congress, but the voluntary action of the collector, that lets the importer have possession of his goods before final liquidation of his entry of them. R. S. sec. 2899 is permissive.

As can easily be inferred, the government practically suffers no loss of revenue from the course thus pursued; otherwise, the Treasury Department would not sanction and continue it.

As to the vast majority of importations, of course, the duty exacted by the collector is paid without protest; a protest is exceptional; though, in the whole volume of the country's foreign commerce, they are numerous in their aggregate—absolutely numerous, but relatively to all entries not numerous. In a still greater majority of instances, the estimated duties, paid upon entry, more than suffice to pay the duties as liquidated. It is only in the still rarer instance of the payment upon entry being insufficient, and the protest being finally overruled, that there has been any delay in receipt of the government's revenue; for if the protest is sustained, the unpaid excess was never rightly the property of the United States—the present case.

In the cause at bar, had the liquidated duty been paid on the same day protest against it was filed, the treasury would have become possessed then (instead of a day later) of money which the collector never should have exacted; nor was it ever rightfully any part of the "revenue" of the United States.

Instances familiar to the Court will enforce this idea. At the date of the Attorney General's Opinion, there were filed, in the several custom-houses and before the Board, an "accumulation" of protests impugning the constitutionality of the act of October 1st, 1890, probably far greater in number than ever were used to embody any other objection. There was no dispute (in most cases) as to rate and classification if the act

of 1890 applied. No collector in this broad land ever assumed to liquidate under the act of 1883 after Oct. 1, 1890; or would dream of so acting upon the ground of unconstitutionality. Hence, the estimated duties were the actual duties, practically, in all these cases. The government could lose nothing, nor the merchant get any refund, unless this court held the act unconstitutional—which it did not. (143 U. S. 649.) This decision was announced Feb. 29, 1892. The Attorney General's opinion bears date Nov. 20, 1891. So it is an easy inference what kind of protests were then "accumulating"; and that their accumulation did not deprive the United States of revenue. The question as to the date when the act of 1894 took effect is another illustration. The collectors obeying the Secretary in adopting August 28 as the date, and there being (generally) no other dispute, the government, having collected the duties estimated upon this basis, lost no revenue on any protest not forwarded to the Board. (159 U. S. 78.)

As to this matter of accumulation to detriment of revenue, it is obvious that, after one protest against classification has been overruled by the collector, all subsequent importations of like character will have applied to them in the estimate of duties by the collector and naval officer (Treas. Reg. of 1892, Art. 298) the rate and classification so previously determined by the collector; and the protests will be designed to recover back what has been so estimated and paid according to such classification deemed by the importer to be erroneous, upon the grounds specified in his protests.

To justify a departure from the meaning of unambiguous language, the cited Opinion of the Attorney-General assigns, at one place, reasons which the facts stated in another portion of the Opinion show to be unfounded. To this extent, the Opinion is *felo de se*. Upon page 190 (20 Atty. G.'s Ops.) appears the time-

worn false assumption that the protesting importers have sold, or do sell, their goods "with duties, *as liquidated*, included in the price." For more than twenty years, we have seen this suggestion used to justify illegality, extortionate exactions, and the retention there of money that never ought to have gone into the United States treasury; but we do not remember ever seeing it put forth before in a document containing the refutation of it. At page 185 of this same Opinion, he attributes the practice of taking personal security, in lieu of retaining the examined packages, to "the urgency of importers to get possession of their goods *without waiting for the liquidation of the duties* with which they are chargeable." (20 Atty. G.'s Op. 185).

The sale cannot include the duties "as liquidated," when made before such liquidation.

When we consider how large a portion [almost all] of the goods as to which any debate about classification, under a tariff-law admitted to be applicable, arises, consists of goods dependent for their profitable marketing upon a sale while the appropriate season, or prevailing fashion, lasts, we can easily understand why the importer cannot await the process of liquidation, usually taking weeks, and sometimes months, if not years—as we shall see presently.

Lest the government otherwise might possibly suffer, the collecter assesses the highest rate, in every case of doubt, even if he is dubious of being ultimately sustained. To say that the importer, with his long experience, knowledge of business and its usages and nomenclature, at once conforms his actions to propositions he believes untenable, and protests against, is to disregard the promptings of human nature. When men will stake thousands upon a yacht race, or a horse-race, or a prize-fight, without ever having seen, or really knowing aught of, either contestant; or bet heavy amounts upon an election months in the future;—it is unreasonable to suppose that men are not governed

in their own affairs by their own mature judgment—*a fortiori* by their *opinions*—but prefer to hold on to their goods, to await the official promulgations of one of less experience. Moreover, a very, very large proportion of importations are sold, or contracted for, "to arrive."

At all events, the assumption put forward to control construction finds no support in the record; and we say it has none in fact.

It is an attempt to support a construction holding that Congress intended to legislate in favor of the collection and retention of a tax it had never authorized, upon the ground that he from whom it was first extorted can relieve himself, and transfer the illegal burden to somebody who cannot help himself!

III.

The natural reading is the intended reading.

The Atty.-Gen's. Op., adopted as the governmental argument here, concedes that sections 14 and 15 of the Customs-Administrative Act "are a radical departure from existing law" (20 A. G. Ops. 189, bottom); yet the quotation marks referred to at the top of page 6 of the government's brief—and, as employed, in the seventh line of its second page—show that the language was framed with a careful application of the draftsman's knowledge of the decisions of this court upon the subject to which it relates.

The Board of General Appraisers (88. 10,477–G. A. 127, Nov. 21, 1890) say, "The full significance of the words 'but not before' can be easily understood in the light of the decision of the U. S. Supreme Court, in

Davies v. Miller, 130 U. S. 284." It is evident they were inserted by a careful hand, to effect a change in the law, and by a hand 'skilful' to accomplish that purpose. The retention of the quotation-marks was a mere error, or inattention, of the compositor; and can hardly affect construction.

Applying judicial decisions to this section, it becomes evident the protest and the payment were dissevered from each other intentionally;—for a clear, just, obvious purpose.

At any time prior to payment, the collector can reconsider the liquidation, and so reliquidate as to conform to, or obviate, the objection raised by the protest. If he neglect, or refuse, to re-liquidate, the protesting importer can pay and thereupon the collector "*shall* transmit the invoice and all the papers," etc., to the Board. (Gov't. Br. p. 2, middle.)

Ten days were deemed sufficient time in which to formulate and file an importer's objections to the liquidation, or to determine if it was obnoxious to any; but it was not thought best to set any fixed time limitation to the collector's right to re-liquidate, it being morally certain no importer would pay so long as he hoped to change the collector's mind, but could bring the matter before the Board by making payment in case of refusal, or unreasonable delay.

Not questioning for a moment that revenue laws (or any other) are to be so construed as to carry out the manifest intention of the legislature, it must be conceded that *the sole legislative intent of section 14 was to give a remedy* to an importer aggrieved by any decision of a collector; and this was given with full knowledge of the cases declaring that he would be entitled to the benefit of doubtful phraseology, and to interpret the language most beneficially for himself (84 Edinb. Rev., July, 1846, p. 118.)

Girr v. Scudds, 11 Exchg. 191.
Hartranft v. Weigman, 121 U. S. 616.

The Attorney General's Opinion, behind which the government brief in this case ramparts itself, declares (20 Op. 189, bot.) section 14 to be "a *radical* departure from existing laws." It will clarify the question presented to turn back to earlier statutes, to observe the tenor of each, and see *from which* the act of June 10, 1890, here departs and *to which it closely adheres.*

The acts of February 26, 1845 (5 Stats. 727) substantially reproduced in the revision as section 3011, and that of June 30, 1864, § 14 (13 Stats. 214), being R. S., sec. 2931, were the law conferring and defining the rights of a protesting importer. These, we assure the Court, we do not purpose to discuss at length; but to note that, while both are expressly repealed by the act of June 10, 1890 (26 Stats. 142, top), the fourteenth section of this last-named act closely follows R. S., sec. 2931; bnt the whole act ignores R. S. sec. 3011, no equivalent for it being found therein!

Anybody who knew the late Justice BRADLEY would be little inclined to question the accuracy of any statement resulting from an examination by him. He was indubitably right when he declared (in Barney v. Watson, 92 U. S. 453, top) the act of 1845 superseded and repealed by the act of 1864. This statement was repeated in the opinion (per MATTHEWS, J.) in Arnson v. Murphy, 109 U. S. 241, near top, where sec. 3011 is treated as subsequently—"now"—in force, only because it "appears as section 3011 of the Revised Statutes." (109 U. S. 241.) The act of 1845 was revived by the misconception of the revisers, not called to the attention of Congress when the entire revision was adopted. This is all that is meant by U. S. v. Schlessinger, 120 U. S. 114.

Accordingly, for ten years—from June 30, 1864 to June 22, 1874—there was no statutory requirement of a *payment* of the duty, under duress of goods or otherwise, as a condition precedent to the review of the collector's assessment for duty.

The right to retain the goods was sufficient to compel payment of the duties, or giving satisfactory security therefor. During this decade, a denial of a right to be heard upon the protest prior to payment was not declared by law.

We will here interject the observation, as touching what is urged (more in the Atty. G's. Opin. and in appellant's brief below, than in that filed here) about the solicitude of Congress for prompt payment, that there has never been a time since the act of July 4, 1789 (1 Stats. 26, bottom, § 3) to the present hour (R. S., secs. 2869 and 2899) that a collector has not either been permitted to accept security, or required to give credit for duties (1 Stats., 168 top, § 41) whether protested against or not.

The report of the Committee of Ways and Means, accompanying the act of June 10, 1890, referring to sections 14 and 15 said (as quoted in the oft-mentioned Opinion (20 Atty. G.'s Ops., 187, near bottom ;—" These sections are substituted for sections 2931 and 2932 of the Revised Statutes." Nothing is substituted for section 3011, repealed.

In the late case of Saltonstall v. Birtwell, 164 U. S. 54, the two opinions read turned on the effect to be given to R. S. § 3011, as amended. There could not be two opinions on the point whether or not R. S. § 2931 by itself required payment to precede *administrative* consideration of the protest. In the act of June 10, 1890, § 14, as in R. S., 2931, the protest is directed against the decision upon—'liquidation' of—*the entry ;* not to the exaction of duty according to that decision, which must be subsequent to it, and might be months after protesting. It is the collector's decision, on the entry of the merchandise, " as to the rate and amount of duties TO BE paid on such merchandise " that is made the subject of protest by THIS section. Under sec. 2931, suit could be brought within ninety days of the Secretary's decision of the appeal to him, for previously-

paid duties, and "within ninety days after payment of duties paid after the decision of the Secretary." No matter how long a time elapsed between liquidation and the determination of an appeal seasonably taken to the Secretary, payment was not a prerequisite to the hearing of that appeal by the Secretary; and, if made within three months after his decision, suit could be maintained for a judicial settlement of the question involved. There is nothing in this section (2931) which is avowedly followed in framing sec. 14, act of 1890, to justify the government's claim of any concurrent limitation of time for protesting and payment; or to make a limitation expressly confined to the filing of protest extend to the payment of the duty.

As already noted, such limitation would tend to defeat the whole object of protesting *to the collector* in respect of an entry, as that object has frequently been defined and declared by the courts. If the purpose were not the same under existing as under previous laws, a notice of appeal would have taken the place of a protest.

"The whole purpose of that notice is to give *the collector* opportunity to revise that decision."

Davies v. Miller, 130 U. S. 288.
Same v. Arthur, 96 *Id.* 149.
Heinze v. Same, 144 *Id.* 34,
and many cases there cited.

The collector still can (and not infrequently does) revise, and sometimes reverses his own decision, to conform to the protest, or to some judicial determination, made while the papers are still in his hands.

Art. 43 of the regulations made under this act of 1890 reads;—

"When an importer has thus notified the collector of his dissatisfaction, the collector (in conjunction with the naval officer, if there be one) *shall* review his action upon the entry and, if satisfied that the claim of the importer is a just one, he shall reliquidate the entry in accordance therewith, and shall send a statement of the facts to the General Appraisers."

This Art. 43 is quoted in SS. 12,068 dated Nov. 14, 1891, instructing a collector to be governed accordingly, and to reliquidate the duty, where convinced of error and of the correctness of the importer's protest, *without* sending the case to the Board of General Appraisers.

There is not the slightest intimation the duties had been paid.

As noticed before, ten days would be too brief a limitation for a voluntary reliquidation by the collector, conformable to the protest; and the statute is imperative that when the protest is followed by payment, the invoice and papers "shall" be transmitted to the Board.

Goldenberg Brothers' goods were imported June 29, and their entry liquidated July 16, 1891 (Rec. 1, fol. 2, pars. 1 and 2); but the usual course is, especially if the question is at all difficult, to take more time. In SS. 13,492-G. A. 1794, Oct. 26, 1892, it appears the duties were liquidated March 2, 1891, protest filed March 11, 1891, and the reliquidation *by the surveyor* at St. Louis, performing there the usual duties of a collector, was July 19, 1892 (over a year after the first liquidation) "exactly in accordance with the claims" of the protest of March 11, 1891; *held*, the importers could not file a second protest against this reliquidation, so made, setting up claims antagonistic to those of their first protest.

SS. 16,503, Oct. 24, 1895, reaffirms right of collectors to re-liquidate.

The natural reading, adopted by Judge TOWNSEND, being the only one which will give collectors the opportunity to consider the objections indicated by the protests to them, should not be departed from.

U. S. v. Wiltberger, 5 Wheat., 95, 96.

The cogent, controlling reasons which alone justify departure from the ordinary meaning of the language

of an act is indicated by this expression of the Supreme Court of Illinois :—

"There are no such monstrous and absurd consequences involved as to require a departure from the natural and obvious meaning of the words here employed."

Beardstown v. Va. 76 Ills. 42.
Sneed v. Com. 6 Dana, 339.
Fitzpatrick v. Gebhart, 7 Kans. 47.

IV.

No such public policy as assumed.

The act of June 10, 1890, indicates no purpose to hasten the payment of duties. A steady and sufficient income from this source is all the government needs ; that, taking one year with another, its revenues may be adequate to its outgoes. After the first year, the government would be just as well off, in providing for expenditures, if duties were payable, and sufficiently secured to be paid, in one year from the day of entry as upon the day of entry. All the prompt payment necessary is secured by requiring the *estimated* amounts to be "first paid, *or secured to be paid*," before a landing permit issues. This requirement of the act of March 2, 1799, C. 22, § 49 (1 Stats. 664) has sufficed for about a hundred years, being reproduced, from this act, as section 2869 of the revision ; amended by act of June 5, 1894 (28 Stats. 86 top). Under the act of 1790 (1 Stats. 168) the security might be to pay in four, six or twelve months, according to the character of the goods, or the country of their exportation ; and greater or less credit was extended by other such enactments. Now, an importer can place his entire importation in a public warehouse, draw it out in lots to suit,

any time within three years, paying on each withdrawal the duty then attaching to the goods withdrawn. Act of 1894, § 20.

When duties shall be paid is as much a subject of varying legislation—not of unvarying "policy"—as *what* (if any) duty shall be levied upon a given importation.

To extort money has never been the *sole* object of tariff legislation. "Congress wishes to foster an honest and honorable commerce by its laws, *no less* than to obtain revenue. It is neither the true policy nor right of the departments . . . . to thwart the views of Congress . . . . or to throw doubts and difficulties over the *liberal* course proper to be pursued generally toward the community in any branch of trade." (Marriott vs. Brune, 9 How. 635.)

"What is termed 'the policy of the government' with reference to any particular legislation is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. *It is a ground much too unstable upon which to rest the judgment of the Court in the interpretation of statutes.*"

Hadden v. Collector, 5 Wall., 111-2.
St. Paul v. Phelps, 137 U. S. 533.
Vidal v. Girard, 2 Howd. 198.

"The motives of the legislators, considered as the purposes they had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments."

Soon Hing v. Crowley, 113 U. S. 710.

V.

Assumed policy entirely conjectural.

It appearing that, originally, the right was to protest (verbally if preferred) upon the payment of any sum as duties exacted, and prospectively as to future entries; which right, held to be taken away incidentally by the act of 1839, was restored in statutory form by the act of 1845, hastily passed to destroy the effect of the majority decision in Cary vs. Curtis; and changed again by the act of 1864; again accidentally by the revision, and deliberately by the act of June 10, 1890; the general customs-law from the earliest date to this time allowing a credit, upon security, for the payment of duties; and the instances in which the estimated duties, paid upon entry, would happen to be less than what *ought* to have been taken—(the present *not* being such a case, as the record shows)—would naturally be infrequent and trifling;—it follows that the assumed 'public policy' upon which the government's argument is wholly based is purely conjectural; while the oft-recognized purpose of a protest to the collector antagonizes the application of any such supposed 'policy' to the legislation under consideration.

"What the legislative intention was can be derived only from the words they have used; and we cannot speculate beyond the reasonable import of *those words*. The spirit of the act must be extracted from the words of the act, and not from conjectures *aliunde*."

Gardner v. Collins, 2 Pet. 93.
Minor v. Mechs. Bk. 1 *Id.* 64.
Smith v. State, 66 Md. 217.

As observed by the Lord Chancellor;—

"It is never very safe ground, in the construction of a statute, to give weight to views of its policy which are themselves open to doubt and controversy." 9 Ap. Cas. 273.

R. v. Barham, 8 B. & C. 104.

The government brief consists, *in toto*, of an *assumption* of the existence of an undeclared intent to expediate the payment of *liquidated* (as compared with *estimated*) duties at an earlier day than that heretofore required; and then arguing for a construction supposed to be required to effect this imaginary intent.

"Courts cannot *imagine* an intent, and bind the letter of the act to it."

Maxwell v. State, 40 Md. 293.
Hyatt v. Taylor, 42 N. Y. 261-2.
Frye v. R. R. 73 Ills. 403 top.

VI.

This brief will be closed with this suggestion; that the construction assigned by Judge TOWNSEND is, at the very least, one of which the section is fairly capable. If Congress could perceive, as it must, that such construction was (legally speaking) *possible* then that was the *intended* construction; for the principle that the citizen is entitled to the construction most favorable to him was equally well known to Congress.

VII.

The judgment of the Circuit Court should have been affirmed by the Circuit Court of Appeals; and the question it has certified should be answered negatively.

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